

### **REMARKS/ARGUMENTS**

The claims are 1-18. Claims 1-16 and 18 were allowed. The remaining claim 17 was rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. The newly-submitted FIG. 7 and the amendment to the specification referring to same presented in Applicant's November 27, 2009 Amendment were not accepted and have not been entered as constituting new matter. The Examiner has taken the position that FIG. 7 would improperly introduce new details about (1) a particular operative relation/location of the spring element and (2) a pneumatic piston/cylinder arrangement and that the particular details of the fluid medium cited in claim 17 are not supported by the disclosure as originally filed.

The rejection of claim 17 and the refusal to accept and enter new FIG. 7 and the amendments to the specification referring to same presented in Applicant's November 27, 2009 Amendment are respectfully traversed and reconsideration is expressly requested.

Applicant would like to thank the Examiner for the courtesy of a telephone interview on April 8, 2010, the substance of which

is set forth herein. During the interview, it was explained that page 14 of the disclosure as originally filed clearly states that the spring element has a fluid medium which can start the lever arrangement and that the new FIG. 7 presented in Applicant's November 27, 2009 Amendment were substantially the same as FIG. 2 as originally filed, except that instead of the bias of spring 2 being provided to the adjustment lever 7 by a leg of the spring, the bias to the adjustment lever 7 is provided by a pneumatic cylinder-operated spring 2'. The Examiner indicated that Applicant should present its arguments in a formal response to the Office Action and he would consider them.

Section 2163.06 of the Manual of Patent Examining Procedure (MPEP) states that information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter. Similarly, MPEP 608.01(1) states that the drawings may be amended without adding new matter as follows:

"In establishing a disclosure, applicant may rely not only on the description and drawing as filed but also on the original claims if their content justifies it.

"Where subject matter not shown in the drawing or described in the description is claimed in the application as filed, and such original claim itself constitutes a clear disclosure of this subject matter, then the claim should be treated on its merits, and requirement made to amend the drawing and description to show this subject matter. The claim should not be attacked either by objection or rejection because this subject matter is lacking in the drawing and description. It is the drawing and description that are defective, not the claim.

"It is, of course, to be understood that this disclosure in the claim must be sufficiently specific and detailed to support the necessary amendment of the drawing and description."

It is respectfully submitted that the new FIG. 7 and the amendments to the disclosure which simply added a brief description of FIG. 7 and reference to pneumatic element P of a pneumatic cylinder-operated spring 2' as an example of a fluid-

operated spring are fully supported by the application as filed and that no new matter has been entered.

As set forth in 35 U.S.C. 112, the detailed description of the invention need only be in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same. It is respectfully submitted that not only does claim 17 itself fully describes to one skilled in the art the amendment to the description and the new FIG. 7 presented in Applicant's November 27, 2009 Amendment, but also new FIG. 7 and the accompanying amendments to the specification are supported by the disclosure as originally filed.

For example, the specification clearly states that the adjustment lever 7 is biased by the spring element and held in the state of being biased by the spring element until the triggering device releases the adjustment lever from its biased state. See e.g., page 12 of the disclosure.

See also page 13 ("the triggering device has a hook-like segment that . . . secures the adjustment lever in its position counter to the effect of the spring element . . . ."); page 19

("the adjustment lever 7 is secured in its rest position, counter to the force of the spring element 2 and, at the same time, stands under the bias of the spring element 2. When the triggering lever 9 is released . . ., the energy content of the biased spring element 2 is suddenly released, and suddenly turns the adjustment lever 7 into an upper end position that can be seen more precisely in Figure 4.")

The specification also describes how one leg of the leg spring 2 is laid against the adjustment lever 7 in the biased position and when released presses the adjustment lever 7 in the direction of the front hood 17 as shown in FIGS. 6a-6c. See, e.g., page 18 of the disclosure. As described at page 24, one leg of the leg spring 2 rests on the inside of a contact bracket 25 formed on the adjustment lever 7 and is under bias so that the adjustment lever would make a transition into the position shown in FIG. 6c when not fixed in place.

The specification then goes on to state at page 25 that it is also possible to configure the spring element 2 in a different form, for example also to bring the adjustment lever 7 into a raised position, in a manner analogous to the manner described above, by means of a fluid medium.

It is respectfully submitted that one skilled in the art would know that a pneumatic spring is a common type of spring which uses a fluid medium such as pressurized air or nitrogen and that from Applicant's disclosure, such pneumatic spring could be used analogously to the leg spring by having the cylinder of the pneumatic spring lie against adjustment lever 7 as shown in new FIG. 7 to supply the bias to the adjustment lever 7. Therefore, it is respectfully submitted that new FIG. 7 and the amendments made to the specification referring to same are supported by the original disclosure.

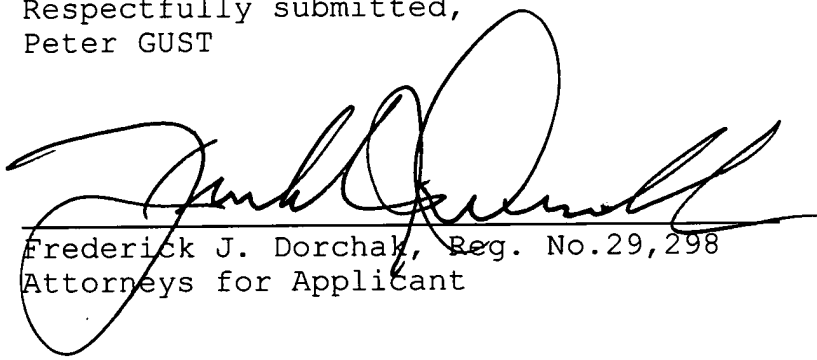
Moreover, it is respectfully submitted that one skilled in the art would know that a piston cylinder spring is a type of fluid medium spring and that the location of the spring and operational position of the spring as shown in FIG. 7 is an example as to how a spring element having a fluid medium as recited in Applicant's claim 17 would operate and would also know how to construct an arrangement of a front hood on a vehicle having at least one hinge device wherein the hinge device has a spring element with a fluid medium as recited in Applicant's claim 17. Accordingly, it is respectfully submitted that claim 17 fully complies with the requirements of 35 U.S.C. 112, that the rejection on that basis should be withdrawn, and that the new

FIG. 7 and the amendments to the specification presented in Applicant's November 27, 2009 Amendment be entered.

In view of the foregoing, withdrawal of the final action and allowance of this application are respectfully requested.

Respectfully submitted,  
Peter GUST

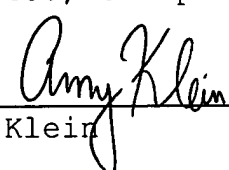
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